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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	IB Docket No. 95-22
	)	RM-8355
Market Entry and Regulation of Foreign-Affiliated Entities	)	RM-8392

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COMMENTS OF IDB MOBILE COMMUNICATIONS, INC.

IDB Mobile Communications, Inc. ("IDB Mobile") hereby submits its Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").

A. SUMMARY

IDB Mobile believes that there should be no entry barriers for international facilities-based services. Regulatory barriers to foreign carrier investment in U.S. carriers will impair effective competition within the United States, to the detriment of U.S. business and U.S. consumers.

If any proposed entry test is adopted, it should be clarified in two important respects. **First**, the FCC must confirm that because of the unique nature of the international mobile satellite services ("MSS") market, any entry test that is adopted would not apply to international MSS. This is fully consistent with the NPRM, which clearly was intended to cover foreign carrier entry into the type of traditional fixed international facilities-based services provided by AT&T, MCI and Sprint on the U.S. end and monopoly PTTs on the foreign end. While PTTs typically have a captive customer base and control bottleneck facilities in their home markets, foreign MSS carriers do not have captive customers, and do

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not control bottleneck facilities. In addition, the provision of facilities-based MSS in the United States is limited to two carriers, Comsat and IDB Mobile, and Comsat enjoys a government-sanctioned monopoly on the provision of Inmarsat space segment -- the essential "raw material" for the provision of international MSS. The Commission must not adopt any rule that would cripple the only facilities-based competition to Comsat in the United States.

Second, the Commission must confirm that any new rule applies only to new entrants. Any attempt to apply a new rule to existing foreign-affiliated carriers who have already made substantial investments in international telecommunications facilities in the United States would be anti-competitive and grossly unfair. If existing foreign-affiliated carriers cannot obtain additional Section 214 authority to offer new services, the proposed new rule would be effectively transformed from an entry barrier to an exit sign.

B. BACKGROUND

IDB Mobile provides international MSS to commercial and private maritime, land mobile and aviation users worldwide. IDB Mobile provides its global services by combining space segment provided by Inmarsat, the de facto monopoly provider of international MSS, with land earth station facilities owned by IDB Mobile.

In September 1991, IDB Mobile became the first non-Inmarsat Signatory in the world to provide facilities-based international MSS. IDB Mobile has invested $38 million in land earth station facilities located in Niles Canyon, California and Staten Island, New York that operate with Inmarsat's Atlantic Ocean Region-East, Atlantic Ocean Region-West and Pacific Ocean Region satellites. By 1993, IDB Mobile had become the sixth largest user of the Inmarsat system. IDB Mobile is still the only facilities-based competitor to Comsat in the United States.

IDB Mobile is interested in this proceeding because it is a joint venture ultimately owned 50% by LDDS Communications, Inc., the fourth largest long distance service provider in the United States, and 50% by Teleglobe, Inc. ("Teleglobe"), a Canadian carrier.

C. ANY NEW RULE SHOULD NOT APPLY TO INTERNATIONAL MOBILE SATELLITE SERVICE

The NPRM does not specifically address the issue of whether any new entry rule would be applied to the unique international MSS market. IDB Mobile submits that application of any new rule to MSS would be inappropriate and contrary to the Commission's policy goals because MSS is critically different from the traditional international services market in at least three fundamental respects. **First**, foreign carriers do not have captive MSS customers, and do not control bottleneck MSS facilities. **Second**, Comsat, the dominant U.S. provider of international MSS services, enjoys a government-sanctioned monopoly on the provision of Inmarsat space segment to U.S.-based land earth stations and for all U.S.-originated shore-to-ship calls. **Third**, the Commission should not adopt any rule that would cripple the only facilities-based competition to Comsat in the United States.

1. Foreign Carriers Do Not Have Captive MSS Customers, And Do Not Control Bottleneck MSS Facilities

Application of any new rule to MSS would be inappropriate because MSS does not fit the traditional international telecommunications model on which the NPRM is predicated. **First**, PTTs in most countries have captive land-based customers, which have no choice of carrier for wireline international services. **Second**, PTTs may have the potential to use their bottleneck facilities to discriminate against non-affiliated competing U.S. carriers.1/ Two of the Commission's goals in proposing the new rules are: (1) to increase the competitive choices for customers in the United States and foreign countries; and (2) to prevent the PTTs from using their control of bottleneck facilities in their home countries to discriminate against non-affiliated U.S. carriers.2/ Any new rule should not apply to MSS because it is does not fit the traditional model of international telecommunications services and, therefore, the application of any such rule would not further the Commission's stated goals in the NPRM.

Traditional land-based wireline international service customers are locked into using a monopoly provider in most countries. By contrast, the Commission has already determined that this is not true for MSS customers because they "have the ability to select any Inmarsat land earth station operator from around the world to provide their services."3/ In fact, there is vigorous competition among land earth station operators for all ship-to-shore MSS calls, regardless of the destination of the calls.

A foreign carrier can control the foreign end of a traditional telephone call by virtue of its ownership of wireline bottleneck facilities. By contrast, since MSS customers can pick any provider they want for ship-to-shore calls (which constitute 65% of the market), no foreign carrier controls bottleneck facilities. Consequently, the Commission has

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1/ NPRM ¶¶ 29, 33, 46.

2/ NPRM ¶¶ 1, 46.

previously determined that even if an MSS provider "is affiliated with a foreign carrier, we do not believe this affiliation raises concerns of discrimination or unfair competitive advantage in this [MSS] context."4/

2. Comsat Enjoys A Government-Sanctioned Monopoly On the Provision Of Inmarsat MSS Space Segment

In the United States, the MSS market is also markedly different from the traditional international telecommunications market because the U.S. government has bestowed upon Comsat exclusive access to provide Inmarsat MSS space segment to U.S.-based land earth stations and for all U.S.-originated shore-to-ship calls. Consequently, IDB Mobile must purchase all of its space segment for these services from Comsat, its primary competitor.

The Commission cannot expect, let alone require, other countries to permit U.S. carriers to freely provide Inmarsat space segment services within their borders when the United States does not itself permit U.S. carriers, let alone foreign carriers, to freely provide Inmarsat space segment services in the United States. In its NPRM, the FCC declared that "[t]he promotion of effective competition in the global market is our primary goal."5/ The Commission further asserted that:

> The competitive strengths and abilities of individual service providers -- rather than the regulatory structure of markets -- should determine the success of service providers in the global telecommunications market.6/

4/ Cruisephone, 9 FCC Rcd at 6818.

5/ NPRM ¶ 27.

6/ Id. ¶ 37 (emphasis added).

IDB Mobile agrees. In the case of Inmarsat MSS services, the Commission should start at home by opening up the provision of Inmarsat space segment to competition.

3. The Commission Should Not Adopt Any Rule That Would Cripple Facilities-Based MSS Competition

The Maritime Satellite Act designates Comsat as the sole U.S. Signatory to Inmarsat.7/ In addition, under current FCC policy, Comsat is the monopoly provider of Inmarsat space segment to all U.S.-based land earth stations, including those owned by IDB Mobile. Comsat began providing international MSS in 1981. Although the Commission authorized carriers other than Comsat to construct and own their own land earth stations as early as 1982,8/ IDB Mobile is the only other provider of facilities-based Inmarsat MSS in the United States. In the face of Comsat's privileged position and overwhelming market power, no other U.S. carrier has entered the market in 13 years or is likely to do so in the near future.

In 1991, the Commission authorized IDB Mobile to provide facilities-based Inmarsat services in competition with Comsat:

> Initially, we find that the provision of Inmarsat aeronautical services by the Applicants will serve the public interest. The Commission's goal of promoting competition in the provision of Inmarsat aeronautical services will be advanced by grant of these applications. It will permit competition in transoceanic aeronautical services

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7/ International Maritime Satellite Telecommunications Act, 47 U.S.C. §§ 751, et. seq., ("Maritime Satellite Act").

8/ Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 FCC 2d 245, 251 (1982); Provision of Aeronautical Services via the Inmarsat System, 4 FCC Rcd 6072, 6080 (1989).

> that should increase service options to the public, improve overall service, and reduce charges.
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> We also find that the Applicants' proposal to provide maritime services will serve the public interest. It will advance the Commission's general policy to promote competition in the provision of maritime communications services in the manner contemplated by Congress.9/

Not surprisingly, the competition introduced by IDB Mobile had an immediate and dramatic effect on Comsat's pricing. For example, since the inception of maritime MSS in 1981, Comsat had charged AT&T and other U.S. interexchange carriers $9.17 per minute to complete a shore-to-ship telephone call. In mid-1993, after gaining FCC approval to interconnect with AT&T, IDB Mobile introduced a shore-to ship rate of $6.50 per minute. Comsat quickly lowered its rate to $6.75 per minute, a 26% reduction from its previous rate of $9.17 per minute. Comsat has implemented similar dramatic reductions in rates for its ship-to-shore telephone service in the face of IDB Mobile's competition.

The Commission's primary goal of "promot[ing] effective competition," is best attained by permitting IDB Mobile, a foreign-affiliated carrier, to continue to offer its customers new and expanded services. Any new rule regarding entry must not be applied to international MSS. IDB Mobile must be able to obtain, expeditiously and with certainty, Section 214 authority to provide new MSS services. If IDB Mobile is not permitted to offer its customers the full range of mobile satellite services, it would be unable to compete effectively with Comsat. Application of any new entry rule to existing foreign-affiliated

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9/ IDB Aeronautical Communications, Inc., 6 FCC Rcd. 2485, 2487 ¶¶ 17-18 (1991) (footnote omitted).

carriers, like IDB Mobile, would quickly eliminate facilities-based MSS competition in the United States, contrary to the clear policy goals set forth by the Commission in the NPRM. Customers would be the clear losers, as there will be few restraints on Comsat's ability to raise its prices.

D. THE NPRM PROPERLY PROVIDES THAT ANY NEW RULE SHOULD APPLY ONLY TO NEW ENTRANTS

1. The NPRM Provides That Any New Rule Would Apply To New Entrants

Throughout the NPRM, the Commission makes it clear that any new rule would apply only to new foreign carrier entrants.10/ At the outset, the Commission explains that the purpose of the NPRM is to consider modifying the Section 214 public interest standard for foreign carriers seeking "to **enter** the U.S. market to provide international facilities-based services."11/ The NPRM "tentatively concludes that we should modify our **entry** standard for international facilities-based carriers. . . ."12/

In the Section entitled "Affiliation for Purposes of **Entry** Authorization," the Commission states that: "[w]e propose to apply any **entry** standard adopted in this rulemaking for international Section 214 applications only to those potential **entrants** that are 'affiliated' with a 'foreign carrier.'"13/ The NPRM's consistent reference to "entry

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10/ NPRM ¶ 46. See also, NPRM ¶ 43 (the new rule would apply "[i]f a foreign carrier desires to enter the U.S. basic international facilities-based market either directly or through affiliation with an authorized carrier").

11/ NPRM ¶ 2.

12/ NPRM ¶ 38.

13/ NPRM ¶ 52.

standard," and "potential entrants" instead of all "foreign carrier applicants" makes it clear that the rule covers only new entrants, not foreign-affiliated carriers the Commission has already authorized to enter the United States.

IDB Mobile asks that the Commission confirm that any new rule only applies to new entrants.

2. The New Rule Should Not Apply To Existing Foreign-Affiliated Carriers That Have Made Investments In the United States Based On The Commission's Prior Policies And Authorizations

Equity, sound public policy and the Constitution all provide additional reasons for not applying any new rules to foreign-affiliated carriers that the Commission has previously authorized to enter the U.S. market. For example, the Commission has repeatedly determined that it was in the public interest for IDB Mobile to offer various facilities-based international MSS services. Based on these decisions, IDB Mobile invested over $38 million in earth station facilities in 1991 to compete against Comsat's monopoly provision of Inmarsat services in the United States. IDB Mobile continues to make substantial investments to upgrade and improve its U.S. facilities. It would be contrary to the public interest, and grossly unfair, to change the rules of the game at this late date. IDB Mobile must be permitted to continue to expand its mobile satellite service offerings so that it can compete effectively against Comsat, as well as against foreign Signatory providers of Inmarsat services.

U.S. companies and the U.S. Government protest vigorously when a foreign government takes steps to diminish the value of an investment by a U.S. company in that foreign country. Fundamental fairness requires that any new rule only be applied to foreign-affiliated carriers that have not already entered the international facilities-based business.

Indeed, applying a new rule to IDB Mobile after it has already made extensive facilities-based investments based on the Commission's prior authorizations would violate the Fifth Amendment's ban on governmental takings. IDB Mobile has a protected "reasonable investment backed expectation."14/ The Commission cannot change this expectation without providing just compensation.

E. CONCLUSION

For the reasons stated above, the Commission should not adopt the proposed rule. If the Commission adopts any entry rule, it should establish that the rule: (1) does not apply to MSS; and (2) does not apply to foreign-affiliated MSS carriers that the Commission has already authorized to enter the U.S. market.

Respectfully submitted,

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14/ Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005-06 (1984). See also Penn Central Transp. Co. v. New York City, 438 U.S. 104, 127 (1978).

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